

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 2760 - SB 2677

June 5, 2020

SUMMARY OF ORIGINAL BILL: Extends, from February 1 to February 15 of every year, the deadline by which the Department of Revenue (DOR) is to submit its findings and recommendations to the Speakers of the House of Representatives and the Senate, and to the Chairs of the Finance, Ways, and Means Committee of the House of Representatives and Senate regarding sales tax collections on all electronic nicotine delivery devices.

FISCAL IMPACT OF ORIGINAL BILL:

NOT SIGNIFICANT

SUMMARY OF AMENDMENT (018134): Deletes all language after the enacting clause. Decreases, from \$500,000 a year to \$100,000 a year, the threshold of sales to consumers in this state for which a dealer with no physical presence in this state or a marketplace facilitator is required to collect and remit the state sales and use tax.

The effective date for marketplace facilitators and out-of-state dealers to begin collection and remittance of sales and use tax is October 1, 2020.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

**Increase State Revenue - \$23,437,800/FY20-21
\$31,250,400/FY21-22 and Subsequent Years**

**Increase Local Revenue - \$8,756,200/FY20-21
\$11,674,900/FY21-22 and Subsequent Years**

Assumptions for the bill as amended:

Out-of-state Retailers:

- Public Chapter 429 of 2019 put into effect the mandatory collections for qualifying out-of-state retailers with \$500,000 in sales to begin on October 1, 2019.
- Some out of state retailers began to collect voluntarily after the Wayfair decision and prior to Public Chapter 429 of 2019.

- As a result of this voluntary collection, DOR estimated the state would annually collect \$59,897,886 in state sales taxes and \$20,658,848 in local sales taxes (in the absence of the state law), for a total of \$80,556,734.
- The Fiscal Review Committee is now estimating total collections of \$182,988,741, which would include collections due to the state Wayfair law.
- After subtracting the \$80,556,734 that is estimated to be collected due to voluntary compliance, it is estimated that \$102,432,007 (\$182,988,741 - \$80,556,734) is attributable to Public Chapter 429 of 2019.
- Based on information previously provided by DOR regarding lowering the threshold to \$100,000 in sales, DOR stated that “new taxable sales”, not including voluntary collections, for those out-of-state entities with sales over \$500,000 are \$883,360,129.
- It is estimated that the average state and local combined tax rate is 9.5 percent, resulting in \$83,919,212 (\$883,360,129 x 9.5%) in additional state and local tax collections that are attributable to Public Chapter 429 of 2019.
- The estimated collections from Public Chapter 429 of 2019 exceed the DOR estimate by \$18,512,795, or approximately 22 percent $[(\$102,432,007 - \$83,919,212) / \$83,919,212]$. This is in large part due to the growth in the economy and sales-taxable purchases by Tennessee residents.
- Based on information previously provided by DOR, taxable sales for remote sellers with sales in Tennessee between \$100,000 and \$500,000 were \$204,502,323.
- Assuming the same 22 percent increase, total taxable sales are currently estimated to be \$249,492,834 $[\$204,502,323 \times (1 + 22\%)]$.
- The current state sales tax rate is 7.0 percent; the average local option sales tax rate is estimated to be 2.5 percent; the effective rate of apportionment to local government pursuant to the state-shared allocation is estimated to be 3.617 percent.
- Due to the effective date of October 1, 2020, the first year impact (FY20-21) will be equal to nine months of collections.
- An estimated recurring increase in state revenue of \$12,624,605 $\{[(\$249,492,834 \times 7.0\%) - (\$249,492,834 \times 7.0\% \times 3.617\%)] / 12 \times 9\}$ in FY20-21 and \$16,832,807 $\{[(\$249,492,834 \times 7.0\%) - (\$249,492,834 \times 7.0\% \times 3.617\%)]$ in FY21-22 and subsequent years.
- An estimated recurring increase in local revenue of \$5,151,759 $\{[(\$249,492,834 \times 2.5\%) + (\$249,492,834 \times 7.0\% \times 3.617\%)] / 12 \times 9\}$ in FY20-21 and \$6,869,012 $[(\$249,492,834 \times 2.5\%) + (\$249,492,834 \times 7.0\% \times 3.617\%)]$ in FY21-22 and subsequent years.

Marketplace Facilitators:

- Public Chapter 646 of 2020 requires collections by marketplace facilitators with sales of \$500,000 or more. A recurring increase in sales tax collections of \$113,131,253 for the state and \$37,710,418 for the local government was estimated.
- The analysis for the proposed legislation utilizes the same methodology as the analysis for Public Chapter 646, only applied to a different taxable base.
- In November of 2017 the United States Government Accountability Office (GAO) published a study on the collectible revenues from the internet retailers and marketplace facilitators.

- Based on this study of potential collectible revenue, 38 percent comes from internet retailers and 46 percent from marketplace facilitators.
- Based on the analysis above, total annual tax collections from internet retailers with sales in Tennessee between \$100,000 and \$500,000 are estimated to be \$23,701,819 (\$16,832,807 + \$6,869,012).
- The total potential online sales tax collections from such retailers are estimated to be \$62,373,208 (\$23,701,819 / 38%); therefore, the collections attributable to marketplace facilitators are estimated to be \$28,691,676 (\$62,373,208 x 46%).
- The GAO's 2017 study estimates that 14 percent to 33 percent of third-party sales through marketplaces are already being collected. It is assumed that 33 percent of third-party sales through marketplaces are already being collected.
- The total recurring increase in sales and use tax revenue from marketplace facilitators is estimated to be \$19,223,423 [\$28,691,676 x (100% - 33%)].
- Based on the state and local sales and use tax collections from internet retailers, it is estimated that the effective breakdown will be 75 percent state and 25 percent local.
- Due to the effective date of October 1, 2020, the first year impact (FY20-21) will be equal to nine months of collections.
- The increase in state revenue is estimated to be \$10,813,175 {[((\$19,223,423 / 12) x 9) x 75%] in FY20-21, and \$14,417,567 (\$19,223,423 x 75%) in FY21-22 and subsequent years.
- The increase in local revenue is estimated to be \$3,604,392 {[((\$19,223,423 / 12) x 9) x 25%] in FY20-21, and \$4,805,856 (\$19,223,423 x 25%) in FY21-22 and subsequent years.

Totals:

- The total increase in state revenue is estimated to be \$23,437,780 (\$12,624,605 + \$10,813,175) in FY20-21 and \$31,250,374 (\$16,832,807 + \$14,417,567) in FY21-22 and subsequent years.
- The total increase in local revenue is estimated to be \$8,756,151 (\$5,151,759 + \$3,604,392) in FY20-21 and \$11,674,868 (\$6,869,012 + \$4,805,856) in FY21-22 and subsequent years.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Krista Lee Carsner, Executive Director

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